

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 08-609MONTERELE ERON DAVENPORT
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 14, 2009

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT,
[NO. CR-06-643-3]HONORABLE KIRK JOHNSON,
JUDGEAFFIRMED; MOTION TO BE
RELIEVED GRANTED**JOHN B. ROBBINS, Judge**

Appellant Montereale Eron Davenport appeals from the revocation of his probation and ten-year prison sentence. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j)(1) of the Rules of the Arkansas Supreme Court, appellant's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. Appellant's counsel's motion was accompanied by a brief discussing all matters in the record that might arguably support an appeal, including the adverse rulings, and a statement as to why each point raised cannot support a meritorious appeal. Mr. Davenport was provided with a copy of his counsel's brief and notified of his right to file a list of pro se points within thirty days, but appellant has declined to file any points on his behalf. We affirm.

Mr. Davenport was convicted of a Class C felony for possession of marijuana with intent to deliver under the Uniform Controlled Substances Act, and was placed on five years'

probation. Mr. Davenport acknowledged and signed his conditions of probation on April 23, 2007, and those conditions required him to report to his supervising officer as directed, and to make monthly payments toward his financial obligations that included court costs, a fine, and supervision fees. On September 5, 2007, the State filed a petition to revoke appellant's probation on the grounds that he failed to report as directed and failed to pay anything toward his financial obligations.

Jo Fredrickson, a probation officer, testified for the State. Ms. Fredrickson stated that since being placed on probation Mr. Davenport did not report for any of his visits with his probation officer. Ms. Fredrickson further testified that Mr. Davenport had made no payments toward his fine and fees as directed in his conditions of probation.

Mr. Davenport testified on his own behalf, and he acknowledged failing to report to his probation officer as directed. Mr. Davenport testified that he was incarcerated for a probation violation in Texas from July through September 2007, and was thus unable to report during that time. However, he took responsibility for his failure to report in May or June 2007, stating, "I can't say nothing about these two months." At the conclusion of appellant's testimony, the trial court revoked his probation and sentenced him to ten years in prison.

To revoke a probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The State has the burden of proof, but need only prove that the defendant committed one violation

of the conditions. *Haley, supra*. When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id.*

Mr. Davenport's counsel correctly asserts in his brief that there can be no meritorious challenge to the sufficiency of the evidence to support Mr. Davenport's revocation. By Mr. Davenport's own admission, he inexcusably failed to make two monthly visits to his probation officer. Therefore, the trial court's finding that Mr. Davenport violated a condition of his probation was not clearly against the preponderance of the evidence.

The only other adverse ruling occurred at the conclusion of the revocation hearing, when the State recommended ten years in prison and Mr. Davenport's counsel responded, "Your honor, we would just ask, if the court sees fit to incarcerate Mr. Davenport, just a jail sanction and give him a chance to be reinstated following that sanction and comply with the conditions of probation." The trial court denied appellant's request for a jail term and instead sentenced him to ten years in prison. However, as appellant's counsel now asserts, this adverse ruling could not be a basis for a meritorious appeal. Pursuant to Ark. Code Ann. § 5-4-309(f) (Repl. 2006), if a trial court revokes probation, it may impose any sentence that might have been imposed originally for the offense of which the defendant was found guilty. Mr. Davenport's conviction for possession of marijuana with intent to deliver carries a sentencing range of four to ten years in prison. *See* Ark. Code Ann. § 5-64-401(a)(4)(A)(i) (Repl. 2005). Because the ten-year sentence for his drug conviction was within the statutory range of sentencing, there is no meritorious point for reversal.

Based on our review of the record and the brief presented to this court, we conclude that there has been full compliance with Rule 4-3(j)(1) and that this appeal is without merit. Accordingly, appellant's counsel's motion to be relieved is granted and the judgment is affirmed.

Affirmed.

HART and BAKER, JJ., agree.